CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 55013 OF 2014
(Arising out of order in original No. 88-89/ST/SRB/2014 dated 30.06.2014 passed by the Commissioner Service Tax (Adjudication), New Delhi).

M/s Clinic Dermatech **Appellant**
SF 13, TDI Mall Rajouri Garden
New Delhi-110027.

VERSUS

Commissioner of Service Tax (Adj.) **Respondent**
C. R. Building, I. P. Estate
New Delhi-110002.

APPEARANCE:

Sh. A. K. Batra & Ms. Vibha Narang, Consultant & Advocate for the appellant
Sh. Vivek Pandey, Authorised Representative for the respondent

CORAM: **HON'BLE MS. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 50650/2019

DATE OF HEARING: 06.05.2019
DATE OF DECISION: 06.05.2019

ARCHANA WADHWA:

After hearing both the sides, we find that demand of service tax to the tune of Rs. 98 lakhs approximately stands confirmed against the appellant under two categories. A part of the demand is under the category Renting of immovable property services, whereas the major part of the demand relates to Beauty Parlour Services.

2. As regards renting of immovable property services, learned Consultant appearing for the appellant submits that appellant is a proprietary concern of one Shri Varun Ratra. He admits that the appellant owns some property, which has been given by them on rent and they are liable to pay service tax under the category of renting of immovable property services. However, he submits that sh. Varun Ratra, who is Prop. Of M/s Clinic Dermatech has already discharged the service tax liability in respect of the rented premises. He further clarifies that initially, by mistake, shri Varun Ratra as also proprietory concern got themselves registered with the Service tax Department separately. However, service tax liability was discharged by the Proprietor Shri Varun Ratra. In these circumstances, it is the contention of the learned Advocate that second time confirmation of service under the said category against the proprietorship unit is not warranted. Though, the said plea of the appellant stands taken note of by the adjudicating authority but by observing that M/s Clinic Dermatech has shown rental income in their balance sheet, he has proceeded ahead to confirm the service tax.

3. Learned Authorised Representative for the Revenue submits that it is not clear as to whether the service tax deposited by Sh. Varun Ratra was in respect of the same premises or not. He further submits that the same premises can be rented to different tenant and the service tax deposited by the Proprietor may belong to some other premises.

4. After appreciating the submissions made by both the sides, we find that admittedly proprietary concern and Proprietor are one and the same person in the eyes of law. If Shri Varun Ratra has already deposited service tax liability, no further liability can be fastened against the Proprietary unit. However, the fact whether the rented premises were the same and one in respect of which Shri Varun Ratra has already discharged service tax liability is required to be verified. For the said purpose, we deem it fit to set aside the impugned order and remand the matter to the Commissioner for denovo adjudication in the light of the observations made in the order.

5. As regards the demand of service tax under the category of Beauty Parlour Service, the learned Consultant has contended that the services provided by them are not regular Beauty Parlour Services inasmuch as the same are provided under the guidance of Doctors and Dermatologist. The same are medically related services which are primarily for improvement of the skin. The same are carried out with the surgical instruments and cannot be held to be ordinary beauty parlour services. He also submits that the cosmetic and plastic services were introduced into the service tax net w.e.f. 01.09.2009 and wherever surgery has taken place, they have discharged their service tax liability under the said category though they have got registered in 2011 under the category of beauty parlour services by mistake. For the above proposition, he relies upon the following decisions of the Tribunal:

i) Commr. of C.Ex. & Cus. Vadodara-I vs. New Look Cosmetic Laser Center -2009 (14) STR 27 (Tri. Ahmd).

ii) New Look Cosmetic Laser Centre, vs. Commissioner of Cus (I) Mumbai -2006 (200) ELT 336 (Tri. Mumbai)

iii) Commr. Of Cus, Delhi-II vs. Bausch and Lomb Eyecare India Pvt. Limited - 2017 (355) ELT 556 (Tri. Del.)

However, learned Advocate fairly agrees that the attention of the adjudicating authority was not drawn to the said decisions of the Tribunal and there is no verification of the facts as regards the type of services being provided by the appellant, which are reflected in the invoices issued by them. He has drawn our attention to the Board Letter referred in New Look cosmetic Laser Center decision.

6. Learned Authorised Representative for the Revenue submits that there is nothing on record to show that the appellant has discharged his service tax liability, whenever surgery has taken place. As regards the balance amount he reiterates the finding of the adjudicating authority.

7. We note that the type of activities undertaken by the appellant is the essential character to classify their services either under Beauty Parlour Services or Cosmetic or Plastic Surgery Services. The invoices raised by them indicating the type of services are required to be examined and verified. Similarly, the appellants stand that they are working under the medical doctors and the Dermatologists is also required to be examined. Their activities have to be classified in the light of the declaration of law by the Tribunal in the above referred case. Inasmuch as we have already remanded the matter in respect of renting of immovable property services, we remand the said part also relatable to Beauty Parlour services to the adjudicating authority for

fresh examination. Needless to say that the appellant would be given an opportunity to putforth their case before him. We make it clear that we have not gone into the merits of the case and all the issues including the issue of limitation is kept open.

(Dictated and pronounced in open Court).

(Archana Wadhwa)
Member (Judicial)

(**Bijay Kumar**)
Member (Technical)

Pant